

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
House of Ronnie, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 6/30/72 - 6/30/74. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon House of Ronnie, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

House of Ronnie, Inc.
ATTN: Irving Paparo, Pres.
One Penn Plaza
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
20th day of January, 1984.

David Parchuck

William D. Hughes
pursuant to Tax Law Section 174

Authorized to administer oaths

STATE TAX COMMISSION

Authorized to administer oaths

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 20, 1984

House of Ronnie, Inc.
ATTN: Irving Paparo, Pres.
One Penn Plaza
New York, NY 10001

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert E. Rochlin
Rochlin, Lipsky, Stoler & Co., P.C.
510 Fifth Avenue
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HOUSE OF RONNIE, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ended June 30, 1972 through June 30, 1974.	:	

Petitioner, House of Ronnie, Inc., One Penn Plaza, New York, New York 10001, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended June 30, 1972 through June 30, 1974 (File No. 32571).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1983 at 1:30 P.M., with all briefs to be submitted by May 4, 1983. Petitioner appeared by Rochlin, Lipsky, Stoler & Co., P.C. (Robert E. Rochlin, C.P.A. and Eugene L. Stoler, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner properly included the wages of certain individuals in computing its business allocation percentage.

FINDINGS OF FACT

1. Petitioner filed a New York State Corporation Franchise Tax Report for each of the fiscal years ended June 30, 1972 through June 30, 1974. On each report, petitioner claimed a business allocation. In computing this business allocation, petitioner took into account the wages paid to certain individuals

who worked at the location of two of petitioner's wholly-owned subsidiaries, Nashville Textile Corp. of Nashville, Georgia ("Nashville") and Jasper Textile Corp. of Jasper, Florida ("Jasper").

2. On September 10, 1980, the Audit Division issued three notices of deficiency to petitioner for the fiscal years ended June 30, 1972, June 30, 1973 and June 30, 1974.

3. The Notice of Deficiency for the fiscal year ended June 30, 1972 asserted a tax due of \$10,598.94, plus interest of \$5,079.54, for a total amount due of \$15,678.48. However, the amount asserted as due as a result of an audit was reduced by the application of a credit from the fiscal year ended June 30, 1975 equal to the total amount of tax allegedly due. Consequently, the Audit Division asserted a balance due of zero for the fiscal year ended June 30, 1972.

4. For the fiscal year ended June 30, 1973, the Audit Division asserted a tax deficiency of \$17,460.19, plus interest of \$9,149.14, for a total amount due of \$26,609.33. However, this amount was also reduced by the application of a credit for the period ended June 30, 1975 equal to the amount of tax allegedly due. Consequently, the Audit Division asserted a balance due of zero for the fiscal year ended June 30, 1973.

5. The Notice of Deficiency issued for the fiscal year ended June 30, 1974 asserted a tax due of \$19,408.37, plus interest of \$8,714.36, for a total amount due of \$28,122.73. The total amount allegedly due was reduced by the application of a credit from the fiscal year ended June 30, 1975 of \$2,369.34 and the application of a credit from the fiscal year ended June 30, 1973 of \$9,874.73. Thus, the balance due on the Notice for the period ended June 30, 1974 was \$15,878.66.

6. To the extent at issue herein, each of the deficiencies was premised upon the disallowance of wages paid to certain individuals which petitioner included in calculating its wage allocation factor.

7. Petitioner sells ladies' clothing, including undergarments and sportswear. After petitioner purchases raw material, it contracts with Nashville and Jasper to have the material cut, sewn and assembled into a garment. The finished material is then returned to petitioner for shipment to its customers. Nashville and Jasper had their own employees to perform their services.

8. In order to facilitate the shipment of its products to its customers, petitioner set up an arrangement with the foregoing subsidiaries. Under this arrangement, petitioner leased space at the Jasper and Nashville locations. Petitioner made direct rental payments for the use of these premises.

9. Officers of petitioner hired a total of approximately twelve individuals to work at the premises rented by petitioner at the Jasper and Nashville locations. These individuals would pack and ticket merchandise, take inventory and ship goods to petitioner's customers. For convenience purposes, the individuals hired by petitioner to work at the Nashville and Jasper locations were carried on the books of the respective subsidiary at which they worked. That is, the books of the Nashville and Jasper subsidiaries reflected the withholding taxes and social security taxes pertaining to these individuals. In addition, the individuals in question were covered by the respective subsidiaries' pension plans and medical insurance. However, the individuals hired by petitioner were designated as such in the books of the subsidiaries. The subsidiaries would then bill petitioner for the wage and fringe benefit expense associated with the individuals hired by petitioners.

10. During the period in issue, two officers of petitioner, Mr. Stanley Rappaport and Mr. Albert Rosa, traveled approximately twenty-six weeks a year to the Nashville and Jasper plants to supervise the individuals that petitioner hired. These individuals were directed solely by Mr. Rappaport and Mr. Rosa. Moreover, Mr. Rappaport and Mr. Rosa determined the amount of their compensation and reviewed their progress. These individuals performed no service for the Nashville or Jasper subsidiaries. In addition, no executive employed by either Nashville or Jasper had any control over these individuals.

CONCLUSIONS OF LAW

A. That during the periods in issue, Tax Law §210(3)(a)(3)¹ provided, in part:

"3. The portion of the entire net income of a taxpayer to be allocated within the state shall be determined as follows:

(a) multiply its business income by a business allocation percentage to be determined by

* * *

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees within the state, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the state, except general executive officers;...."

B. That section 4.26 of the regulations of the State Tax Commission, which was in effect during the periods in issue, provided, in part:

"4.26 (formerly Art. 414(1)). Definition of Employees.

a. Employees, whose wages, salaries and other personal service compensation are included in the computation of the payroll factor of the business allocation percentage, include every individual (except

¹ During 1973 only, Tax Law §210(3)(a)(3) began with the phrase "Except as provided in subdivision three-a of this section,...". Subdivision three-a pertained to insurance companies and, therefore, has no bearing on this case.

a general executive officer) where the relationship existing between the taxpayer and such individual is that of employer and employee.

b. Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method or designation of the compensation, are immaterial."

C. That since the individuals in issue were hired by petitioner, supervised by petitioner and ultimately paid by petitioner, the individuals were employees of petitioner within the meaning of Tax Law §210(3)(a)(3) and Regulation §4.26. Accordingly, petitioner properly included the individuals in question who were employed at the Nashville and Jasper plant locations in the computation of its business allocation percentage.

D. That the petition of House of Ronnie, Inc. is granted.

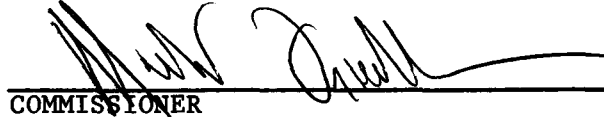
DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984


PRESIDENT


COMMISSIONER


COMMISSIONER